



INTERIOR BOARD OF INDIAN APPEALS

Vivian Chicharello v. Southern Plains Regional Director, Bureau of Indian Affairs

37 IBIA 1 (10/01/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

VIVIAN CHICHARELLO,
Appellant

v.

SOUTHERN PLAINS REGIONAL
DIRECTOR, BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Vacating Decision
: and Remanding Case
:
:
:
: Docket No. IBIA 01-38-A
:
:
: October 1, 2001

This is an appeal from a November 6, 2000, decision of the Southern Plains Regional Director, Bureau of Indian Affairs (BIA), concerning an amendment to a residential lease under which Vivian Chicharello (Appellant) is lessee. As discussed below, the Board vacates the November 6, 2000, decision and remands this matter to the Southern Plains Regional Director for further consideration.

Appellant's lease covers a one-acre tract within Navajo Allotment 220169 and was approved on September 1, 1981, by the Superintendent, Eastern Navajo Agency, BIA, for a term of 25 years, with an automatic renewal for an additional 25 years.

On February 28, 2000, the Acting Navajo Regional Director, BIA, approved an amendment to the lease. The amendment extended the lease term through February 27, 2050, and stated that its purpose was to enable Appellant to obtain a leasehold mortgage. As authority, the amendment cited 25 U.S.C. § 4211(b). 1/

1/ 25 U.S.C. § 4211 provides:

“(a) Authority to lease

“Notwithstanding any other provision of law, any trust or restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, subject to the approval of the affected Indian tribe and the Secretary of the Interior, for housing development and residential purposes.

“(b) Term

“Each lease pursuant to subsection (a) of this section shall be for a term not exceeding 50 years.”

By memorandum dated October 23, 2000, the Deputy Commissioner of Indian Affairs delegated authority to the Southern Plains Regional Director to “exercise the authority of the Secretary to approve, modify, or disapprove any and all realty transactions that affect any allotment within the Navajo Region in which the Navajo Regional Director has an ownership interest.” The Navajo Regional Director is one of the owners of Navajo Allotment 220169. Therefore, pursuant to the Deputy Commissioner’s delegation, this matter was transferred to the Southern Plains Regional Director.

Upon review of the file, the Southern Plains Regional Director concluded that the February 28, 2000, lease amendment “was not properly executed and agreed to by all parties in ownership and was approved without proper authority and is therefore invalid and of no force or effect.” Nov. 6, 2000, Decision at 2. He further concluded that Appellant’s original lease remains in effect and will expire on August 31, 2031.

Appellant appealed to the Board and filed an opening brief. Answer briefs were filed by Mary Ortiz, Lucy Ortiz, and the Southern Plains Regional Director. In his answer brief, the Southern Plains Regional Director requested remand of this matter so that he might reconsider his decision. No party has objected to his request.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the November 6, 2000, decision issued by the Southern Plains Regional Director is vacated, and this matter is remanded to him for further consideration.

//original signed
Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge